IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WRS, INC., d/b/a WRS MOTION PICTURE LABORATORIES, a corporation, Plaintiff, vs. PLAZA ENTERTAINMENT, INC., a corporation, ERIC PARKINSON, an individual, CHARLES von BERNUTH, an individual and JOHN HERKLOTZ, an individual, Defendants.	CIVIL ACTION No. 00-2041

PLAINTIFF'S REPLY TO DEFENDANT HERKLOTZ'S RESPONSE TO PLAINTIFF'S CONCISE STATEMENT OF MATERIAL FACTS IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AS TO DAMAGES AGAINST DEFENDANT, JOHN HERKLOTZ

AND NOW comes Plaintiff, WRS, Inc. d/b/a WRS Motion Picture Laboratories, (hereinafter "WRS") by and through its counsel, Thomas E. Reilly, P.C., and files the within Reply to Defendant Herklotz's Response to Plaintiff's Concise Statement of Material Facts:

1. Denied. Herklotz's assertions that WRS continued to perform services and extend credit although Plaza failed to pay and that WRS failed to make collections under the services agreement are precluded by the entry of judgment as to liability, Herklotz's unconditional undertaking in his Guaranty and Herklotz's failure to plead Mitigation or Avoidable Consequences as Affirmative Defenses in the Herklotz's Answer and Affirmative Defenses filed in this action as distinguished from the action filed at 03-1398, (the Answer and Affirmative Defenses included in Herklotz's Appendix is the pleading filed in at 03-1398 which action has been dismissed.) Furthermore, the WRS

records show that collections were made under the Services Agreement that represented the majority of payments credited to Herklotz's obligation.

The amount owed on August 31, 1998 was $685,379.86 exclusive of accrued finance charges of $35,299.29 which when added equals the sum of $720,679.15 as shown in Account Receivable Management report of August 31, 1998 attached as an exhibit to the Affidavit of Jack Napor filed in opposition to Defendant Herklotz's Motion for Summary judgment and filed at docket number 84 Exhibit 2, which WRS incorporates herein by reference. The receivable amount as of July 24, 1998 could not be obtained because WRS could no longer create an account receivable management report for that day. WRS produced Account Receivable Management reports and other documentation that demonstrated the accrual of the debt by the addition of invoices and demonstrated the application of payments to the receivable in the ordinary and usual course of WRS business as confirmed by Schneider Downs. The date of July 24, 1998 is irrelevant and immaterial to WRS claim. The computer errors mentioned by Jack Napor and referred to in Herklotz's response pertained to software employed after January 1, 2000 and not the records pertaining to Plaza as verified by Schneider Downs. WRS acquired from the National Bank of Canada and produced for Herklotz and Schneider Downs NBOC records of the activity in the lock box which Schneider Downs confirmed corresponded to the activity recorded in the WRS records. By reason of the foregoing, Herklotz's response fails to demonstrate genuine issues of fact material to the issue of WRS damages.

2. Admitted.

3. Denied. Any issue of WRS billing practices as distinguished from the accuracy of its records is precluded by the entry of judgment as to liability, Herklotz's unconditional undertaking in his Guaranty and Herklotz's failure to plead Mitigation or Avoidable Consequences as Affirmative Defenses in the Herklotz's Answer and Affirmative Defenses filed in this action as distinguished from the action filed at 03-1398 (the Answer and Affirmative Defenses included in Herklotz's Appendix is the pleading filed in at 03-1398 which action has been dismissed.). Although the Eric Parkinson agreed to pay the outstanding debt owed to WRS by Bread & Water Productions, WRS has made no claim for that receivable. Furthermore, records pertaining to the outstanding Bread & Water Receivable were produced to Herklotz and the Bread & Water Receivable appeared in each Account Receivable Management Report produced to Herklotz. Herklotz has not and cannot demonstrate any facts that demonstrate or even infer that funds due on Plaza debt were paid on the Bread & Water Receivable or that Bread & Water invoices were improperly included in the calculation of the amount of Herklotz liability. Herklotz's affidavit does not create a genuine issue of material fact concerning the conclusions of the Schneider Downs Report.

4. Admitted

5. Admitted in part Denied in Part. WRS admits that Herklotz affidavit demonstrates both now and at the time he gave his unconditional guaranty to WRS, Herklotz was an astute and successful business man, investor, with a strong financial background who participated in the business and financial affairs of Plaza as CEO, shareholder, lender, customer and advisor and was fully apprised of Plaza's financial condition and plans for his film Giant of Thunder Mountain and other films from and

after March 28, 1998, the date of the Meeting of the Board of Directors referred to in his Affidavit.. The matters raised in Herklotz affidavit are either precluded by the entry of judgment as to liability, Herklotz's unconditional undertaking in his Guaranty and Herklotz's failure to plead Mitigation or Avoidable Consequences as Affirmative Defenses in the Herklotz's Answer and Affirmative Defenses filed in this action as distinguished from the action filed at 03-1398 (the Answer and Affirmative Defenses included in Herklotz's Appendix is the pleading filed in at 03-1398 which action has been dismissed.), or are matters that involve his relationship with his cohorts in Plaza that are irrelevant and immaterial to his relationship with WRS. Furthermore, the Affidavit fails to demonstrate the any genuine or material error in the amount shown to be owing by the WRS business records.

6. Denied. Herklotz's Answer and Affirmative Defenses filed in this action as distinguished from the action filed at 03-1398 (the Answer and Affirmative Defenses included in Herklotz's Appendix is the pleading filed in at 03-1398 which action has been dismissed.) did not plead "payment" mitigation or avoidable consequences as affirmative defenses as required by F.R.C.P. 8 (c) nor does Herklotz's Affidavit identify any evidence to demonstrate a genuine issue of fact to contradict the amount owed by Plaza Entertainment, Inc. as reflected on the business records kept by WRS. The remaining matters mentioned in the last two sentences of Paragraph 6 are precluded by the entry of judgment as to liability, Herklotz's unconditional undertaking in his Guaranty and Herklotz's failure to plead as set forth above.

7. Admitted in part Denied in part. WRS Admits that the Terms and Conditions speak for themselves as alleged in WRS paragraph 7. WRS denies the

remainder of Herklotz's response because the matters raised therein are precluded by the entry of judgment as to liability, Herklotz's unconditional undertaking in his Guaranty and Herklotz's failure to plead as set forth above.

8. Denied. WRS denies Herklotz Response. Rather, WRS submits that Herklotz has failed to respond to the facts contained in Paragraph 8, of its Concise Statement and therefore Herklotz has admitted the substance of Paragraph 8 of its concise statement. The remainder of Herklotz Response is a reiteration of matters previously addressed and not responsive to this averment. WRS incorporates by reference thereto paragraphs 1 through 7 as if fully set forth. Herklotz cannot produce any written claim for adjustment or change presented to WRS by Plaza Entertainment, Inc. with respect to any invoice that makes up the currently unpaid debt as required by the Terms and Conditions.

9. Denied. WRS denies Herklotz Response. Rather, WRS submits that Herklotz has failed to respond to the facts contained in Paragraph 9, of its Concise Statement and therefore Herklotz has admitted the substance of Paragraph 9 of its Concise Statement. The remainder of Herklotz Response is a reiteration of matters previously addressed and not responsive to this averment. WRS incorporates by reference thereto paragraphs 1 through 8 as if fully set forth. Herklotz cannot produce any written claim for adjustment or change presented to WRS by Plaza with respect to any invoice that makes up the currently unpaid debt as required by the Terms and Conditions and therefore, Herklotz cannot challenge the amount of any invoice included in the current amount due.

10. Denied. WRS denies Herklotz Response. Rather, WRS submits that Herklotz has failed to respond to the facts contained in Paragraph 10 of its Concise

Statement and therefore Herklotz has admitted the substance of Paragraph 10 of its concise statement. The remainder of Herklotz Response is a reiteration of matters previously addressed and not responsive to this averment. WRS incorporates by reference thereto paragraphs 1 through 9 as if fully set forth. Herklotz cannot produce any written claim for adjustment or change presented to WRS by Plaza Entertainment, Inc. with respect to any invoice that makes up the currently unpaid debt as required by the Terms and Conditions. Each invoice sent to Plaza Entertainment, Inc. by WRS contained the legend as represented by the invoice attached as Exhibit “3” to the Napor Affidavit entitling WRS to a 11/2% per month interest charge which is an annual percentage charge of 18%.

11. Admitted in part Denied in part. WRS admits and submits that Herklotz has admitted that the documents including his Guaranty entitle WRS to recover attorney’s fees. WRS denies the suggestion that the fees of Thomas E. Reilly include general business advice. Rather, the fees were for services rendered in the collection of the Plaza Debt which included evaluation of he propriety of exploiting the content of the Plaza video’s as a means of recovering payment and consideration of Parkinson’s proposed effort to involve EnterTech as a means of recovery but all matters pertained to recovery of the Plaza Receivable.

12. Denied. WRS incorporates in its Reply to Paragraph 11 as if fully set forth. Since filing its original Affidavit, Thomas E. Reilly has accrued additional fees in the sum of Plaintiff filed herewith a supplemental Affidavit of the Additional fees incurred from the closing date of the last Affidavit in the sum of $9,900. as shown on the attached print out which must be added to the Herklotz obligation.

13. Denied. WRS denies Herklotz Response. Rather, WRS submits that Herklotz has failed to respond to the facts contained in Paragraph 13 other than to deny them and to reiterate other matters addressed above. Therefore, Herklotz has admitted the substance of Paragraph 13 of WRS's Concise Statement that under the Terms & Conditions, Exhibit "4" to the Napor Affidavit, Plaza Entertainment, Inc. agreed to pay storage charges for film materials left with WRS. As evidenced by the Invoice attached as Exhibit "3" to the Napor Affidavit and the Napor Affidavit from August 1, 2001 until May 31, 2006 Plaza Entertainment, Inc. stored 65 pallets of material with WRS for a monthly storage charge of $650. The total storage charges for the period were $38,850 with interest as provided in Exhibit"3" in the sum of $12,080.25. Furthermore, Herklotz has not produced any substantive evidence to contradict this statement.

14. Denied. WRS denies Herklotz's Response. Rather, WRS submits that Herklotz has failed to respond to the facts contained in Paragraph 14 of its Concise Statement and therefore Herklotz has admitted the substance of Paragraph 14 of its concise statement. The terms of the Service Agreement, state that WRS was entitled to a minimum monthly payment of $5,000.00 from November of 1998 to December 31, 2000 for a period of 25 months for a total of $125,000.00. WRS records do not indicate any payment of these fees. In fact, WRS records show all lock box payments went to reduce the receivable. The remainder of Herklotz's Response Reiterates assertion mentioned above. WRS incorporates by reference thereto Paragraphs 1 through 13 of this Reply.

15. Denied. WRS denies Herklotz's Response. Rather, WRS submits that Herklotz has failed to respond to the facts contained in Paragraph 15 of its Concise Statement and therefore Herklotz has admitted the substance of Paragraph 15 of its

concise statement. Aside form reiterating matters precluded by the entry of judgment as to liability, his unconditional guaranty and failure to plead mitigation and avoidable consequences, Herklotz has not shown any payment or miscalculation to reduce the amount shown on the WRS business records as verified by Schneider Downs. Therefore, Herklotz admitted that that the total amount owed exclusive of interest as of the date of this affidavit is the sum of $1,205,827.84. WRS incorporates its Reply to Paragraph 1 thorough 14 with respect to the remaining items reiterated in Paragraph 15.

16. WRS denies Herklotz's Response. Rather, WRS submits that Herklotz has failed to respond to the facts contained in Paragraph 16 of its Concise Statement with contradictory facts and therefore Herklotz has admitted the substance of Paragraph 10 of its Concise Statement that the total amount due and owing to WRS as of October 13, 2006, based upon the business records of WRS including attorney's fees as calculated in the Napor Affidavit, is the sum of shown on the is $2,527,029.03 plus additional interest on the sum of $1,205,827.84 at the rate of 1.5% per month from October 13, 2006 and additional Attorneys fees for enforcement of an judgment. The remainder of Herklotz's Response to Paragraph 16 is a reiteration of assertions previously addressed. WRS incorporates by reference thereto paragraphs 1 through 15 as if fully set forth.

Respectfully submitted,

THOMAS E. REILLY, P.C.

BY: /s/ Thomas E. Reilly

Thomas E. Reilly, Esquire
Firm I.D. #511
2025 Greentree Road
Pittsburgh, PA 15220
(412) 341-1600

CERTIFICATE OF SERVICE

I, Thomas E. Reilly, Esquire, hereby certify that a true and correct copy of the PLAINTIFF'S REPLY TO DEFENDANT HERKLOTZ'S RESPONSE TO PLAINTIFF'S CONCISE STATEMENT OF MATERIAL FACTS IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AS TO DAMAGES AGAINST DEFENDANT, JOHN HERKLOTZ was delivered via first-class mail, postage pre-paid on the _19th_ day of December, 2006 to the following:

Eric Parkinson, individually and
As President of Plaza Entertainment, Inc.
4929 Wilshire Boulevard
Suite 830
Los Angeles, CA 90010

John W. Gibson, Esquire
Greenfield Court
1035 Fifth Avenue
Pittsburgh, PA 15219

John P. Sieminski, Esquire
Burns, White & Hickton
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212

THOMAS E. REILLY, P.C.

BY: ____/s/ Thomas E. Reilly______
Thomas E. Reilly, Esquire
Attorney for Plaintiff, WRS, Inc.

VERIFICATION

I, Jack Napor of WRS, Inc. depose and say subject to the penalties of 18 Pa.C.S.A. §4904 relating to Unsworn Falsification to Authorities that the facts set forth in the foregoing pleading are true and correct to the best of my information and belief.

_____/s/ Jack Napor________
Jack Napor